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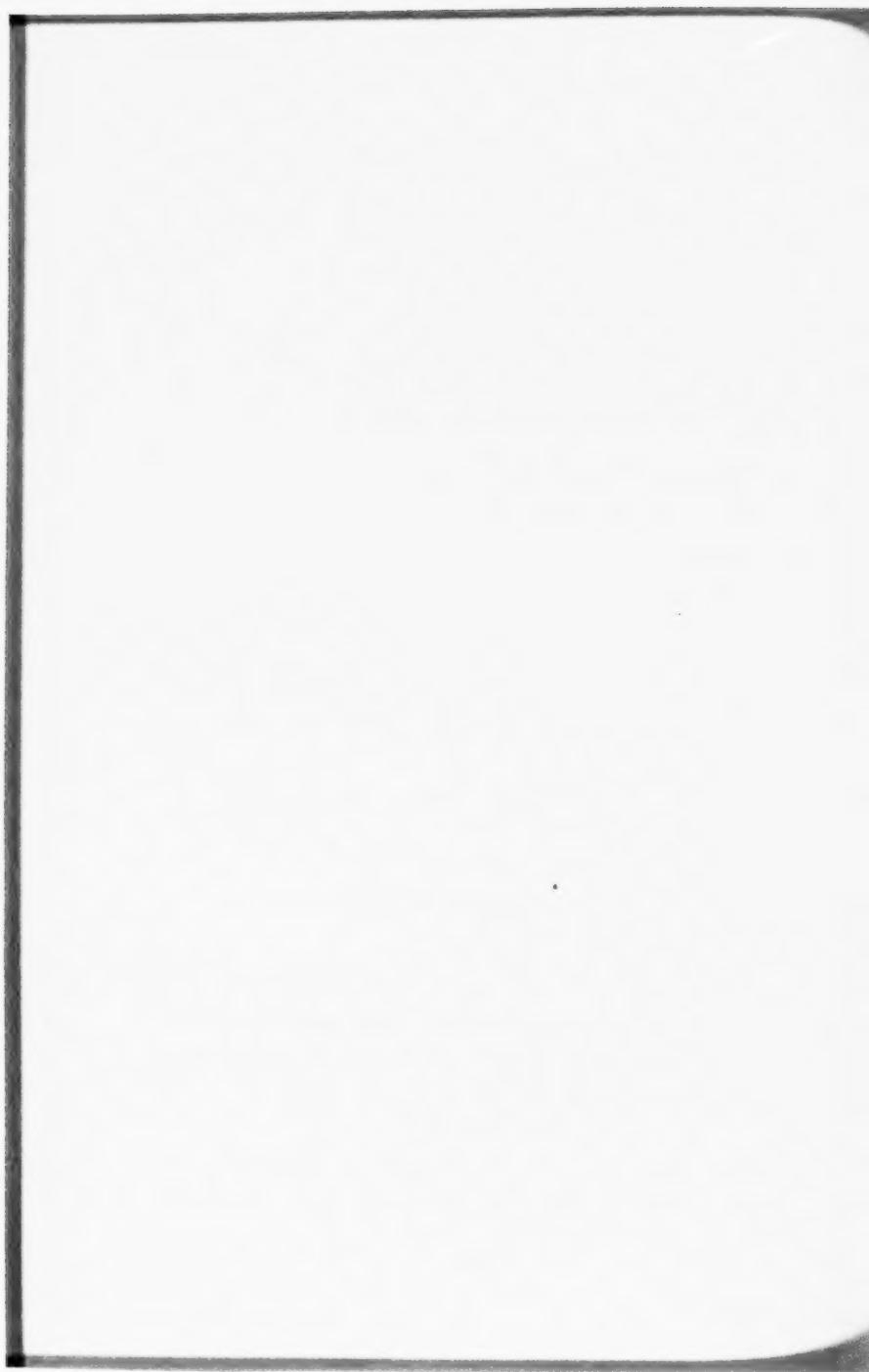
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# In the Supreme Court of the United States

OCTOBER TERM, 1948

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No. 546

WALTER T. GUNN, PETITIONER

*v.*

VINCENT Y. DALLMAN, INDIVIDUALLY AND AS COL-  
LECTOR OF INTERNAL REVENUE FOR THE 8TH COL-  
LECTION DISTRICT OF ILLINOIS

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SEVENTH CIRCUIT*

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**BRIEF FOR THE RESPONDENT IN OPPOSITION**

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## **OPINIONS BELOW**

The opinion of the District Court (R. 39-41) is reported in 72 F. Supp. 617. The opinion of the Circuit Court of Appeals (R. 67-70) is reported in 171 F. 2d 36.

## **JURISDICTION**

The judgment of the Court of Appeals was entered on November 30, 1948. (R. 71.) The peti-

tion for a writ of certiorari was filed on February 5, 1949. The jurisdiction of this Court is invoked under 28 U. S. C., Sec. 1254.

#### QUESTION PRESENTED

Whether the imposition of federal income taxes on the salary received by petitioner as a judge of the Supreme Court of Illinois violates the Federal Constitution.

#### STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

##### Internal Revenue Code:

SEC. 22 [as amended by Section 1 of the Public Salary Tax Act of 1939, c. 59, 53 Stat. 574].  
Gross Income.

(a) *General Definition*.—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service (including personal service as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing), of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; \* \* \*. (26 U. S. C. 1946 ed., Sec. 22.)

Public Salary Tax Act of 1939, c. 59, 53 Stat. 574:

SECTION 1. Section 22(a) of the Internal Revenue Code (relating to the definition of

“gross income”) is amended by inserting after the words “compensation for personal service” the following: (“including personal service” as an officer or employee of a State, or any political subdivision thereof, or any agency or instrumentality of any one or more of the foregoing”).

SEC. 210. For the purposes of this Act, the term “officer or employee” includes a member of a legislative body and a judge or officer of a court.

## Constitution of the United States:

### ARTICLE I

\* \* \* \* \*

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be Uniform throughout the United States; \* \* \*

\* \* \* \* \*

### ARTICLE III

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall

not be diminished during their Continuance in Office.

#### SIXTEENTH AMENDMENT

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

Jones, Illinois Statutes Annotated (1934) :

Illinois Constitution, Article VI

SECTION 7. From and after the adoption of this Constitution, the judges of the supreme court shall each receive a salary of \* \* \*, payable quarterly, until otherwise provided by law. And after said salaries shall be fixed by law, the salaries of the judges in office shall not be increased or diminished during the terms for which said judges shall have been elected.

#### STATEMENT

The essential well-pleaded facts alleged in the complaint are these :

The petitioner, hereinafter called the taxpayer, is and has been since July 1, 1938, a judge of the Supreme Court of Illinois. (R. 3.) During the years 1939 through 1944, he received \$15,000 annually as his salary, pursuant to Illinois statute. (R. 3, 6, 7, 9, 10.)

The taxpayer paid under protest the federal income taxes imposed on the salary so received either on demand of the United States, together with the filing of the federal income tax returns, or by with-

holding from his salary by the Treasurer of the State of Illinois which was paid over to the Collector under the Current Tax Payment Act of 1943. (R. 3, 6, 7, 8-9, 10.) The taxpayer filed claims for refund and brought this suit for the recovery of the income taxes paid on the ground that the imposition of such taxes was unconstitutional. (R. 5, 6, 7, 9, 11.)

The respondent moved to dismiss the complaint on the ground that it failed to state a claim upon which relief could be granted. (R. 39.) The motion was allowed, and when the taxpayer elected to stand on the complaint, judgment was entered for the respondent. (R. 42-43.) The Court of Appeals affirmed. (R. 71.)

#### ARGUMENT

The taxpayer's salary is includible in his taxable gross income in accordance with the Public Salary Tax Act of 1939, which amended the definition of gross income under Section 22(a) of the Internal Revenue Code to include the compensation of "an officer or employee of a State", and which defined the term "officer or employee" so as to include a "judge or officer of a court".<sup>1</sup>

<sup>1</sup> Public Salary Tax Act of 1939, Secs. 1 and 210. There is nothing in this amendment, its legislative history, or the administrative interpretation to justify the taxpayer's assertion (Pet. 9) that the Act did not include the compensation of the officers and employees of the executive branch of the state within the taxable gross income under Section 22(a) of the Internal Revenue Code. H. Doc. No. 113, 76th Cong., 1st Sess.; H. Rep. No. 26, 76th Cong., 1st Sess. (1939-2 Cum. Bull. 487); H. Conference Rep. No. 390, 76th Cong., 1st Sess. (1939-2 Cum. Bull.

The contention that Congress was without power under the Constitution to impose the tax is without merit. The contrary view, reflected in *Collector v. Day*, 11 Wall. 113, has since been thoroughly discredited in *Graves v. New York ex rel. O'Keefe*, 306 U. S. 466, and nothing presented in the petition herein calls for further consideration of this question. Nor is any distinction to be drawn by reason of the fact that taxpayer is a judge. Cf. *O'Malley v. Woodrough*, 307 U. S. 277.

Every substantial question presented by this petition was decided below in accord with controlling decisions of this Court. It is respectfully submitted that none of these decisions warrant reexamination, and the petition should, therefore, be denied.

✓ PHILIP B. PERLMAN,  
*Solicitor General.*

✓ THERON LAMAR CAUDLE,  
✓ *Assistant Attorney General.*

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MARCH, 1949.

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502); S. Rep. No. 112, 76th Cong., 1st Sess. (1939-2 Cum. Bull. 491); and Treasury Regulations 103, Sec. 19.22(a)-2, Treasury Regulations 111, Sec. 29.22(a)-2, both promulgated under the Internal Revenue Code. Hence, there is no foundation for the alleged discrimination.



